

## **§ 7.155**

factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if:

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

### **§ 7.155 Exceptions to the rules against age discrimination—reasonable factors other than age.**

A recipient is permitted to take an action otherwise prohibited by §§ 7.140 and 7.145 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

### **§ 7.160 Burden of proof.**

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 7.150 and 7.155 is on the recipient of EPA financial assistance.

### **§ 7.165 Special benefits for children and the elderly.**

If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

## **40 CFR Ch. I (7–1–12 Edition)**

### **§ 7.170 Alternative funds disbursement procedures.**

(a) When EPA withholds funds from a recipient under Subpart F of these regulations, the Administrator may disburse the withheld funds directly to an alternate recipient: Any public or non-profit private organization or agency, or State or political subdivision of the State.

(b) The Administrator will require any alternate recipient to demonstrate the ability to achieve the goals of the Federal statute authorizing the funds and these regulations (40 CFR Part 7).

### **§ 7.175 Exhaustion of administrative remedy.**

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Age Discrimination Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and EPA has made no finding with regard to the complaint; or

(2) EPA issues any finding in favor of the recipient.

(b) If EPA fails to make a finding within 180 days or issues a finding in favor of the recipient, EPA shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant that:

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary of the Department of Health and Human Services, the Administrator, the Attorney General of the United States, and the recipient;

(iv) The notice must state: The alleged violation of the Age Discrimination Act; the relief requested; the court in which the complainant is bringing